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Attorneys for Defendants,
JOHNSON & JOHNSON, JOHNSON & JOHNSON
PHARMACEUTICAL RESEARCH & DEVELOPMENT, L.L.C.,
and ORTHO-McNEIL PHARMACEUTICAL, INC., now known as
ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC.

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FILED
APR 30 2010
JUDGE JESSICA R. MAYER

KARLIN HERRING,

Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
DOCKET NUMBER: MID-L-5787-07-MT

v.

CIVIL ACTION

ORTHO-McNEIL PHARMACEUTICAL, INC., IN RE ORTHO EVRA® BIRTH CONTROL
JOHNSON & JOHNSON, JOHNSON & JOHNSON PATCH LITIGATION
JOHNSON PHARMACEUTICAL RESEARCH CASE CODE 275
& DEVELOPMENT, L.L.C. f/k/a R.W.
JOHNSON PHARMACEUTICAL RESEARCH
INSTITUTE, JANE DOE DISTRIBUTORS (1-
50), JILL DOE MANUFACTURERS (1-50),
JACK DOE WHOLESALERS (1-50), JAKE
DOE SELLERS (1-50), JOHN DOE
MARKETERS (1-50), JOAN DOE
FORMULATORS (1-50), JIM DOE HEALTH
CARE PROVIDERS (1-50), and JEAN DOE (1-
50),

AMENDED ORDER

Defendants.

THIS MATTER having been brought before the Court by Drinker Biddle & Reath LLP, attorneys for Defendants Johnson & Johnson, Johnson & Johnson Pharmaceutical Research & Development, L.L.C., and Ortho-McNeil Pharmaceutical, Inc., now known as Ortho-McNeil-Janssen Pharmaceuticals, Inc. (“Defendants”), for leave to file under seal Plaintiff’s Opposition to Defendants’ Motion Regarding Choice of Law on the Issue of Punitive Damages and

Defendants' Motions for Summary Judgment and all related papers; and such relief being authorized by R. 1:38-11 and R. 4:10-3; and the Court having considered the papers submitted; and the Court having heard the arguments of counsel, if any, and for good cause shown;

IT IS ON THIS 30 day of April, 2010:

ORDERED as follows

GRANTED IN PART

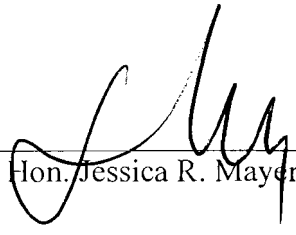
(1) Defendants' motion is hereby GRANTED in part.

(2) Plaintiff's Opposition to Defendants' Motion Regarding Choice of Law on the Issue of Punitive Damages shall be filed under seal in accordance with R. 1:38-11 and R. 4:10-3, in accordance with the court's written memorandum dated April 30, 2010.

(3) Defendants' Motion for Partial Summary Judgment Relating to Plaintiff's Failure to Warn Claim and all related papers shall be filed under seal in accordance with R. 1:38-11 and R. 4:10-3. **DENIED** without prejudice

(4) Defendants' Motion for Partial Summary Judgment Relating to Plaintiff's Consumer Fraud Claim and all related papers shall be filed under seal in accordance with R. 1:38-11 and R. 4:10-3. **DENIED** without prejudice

(5) A signed copy of this Order be ^{posted} served on all counsel within 7 days of the date hereof.



Hon. Jessica R. Mayer, J.S.C.

☒ Unopposed

☐ Opposed

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
JESSICA R. MAYER, J.S.C.
JUDGE



MIDDLESEX COUNTY COURT HOUSE
P.O. Box 964
NEW BRUNSWICK, NEW JERSEY 08903-964

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS**

**Memorandum of Decision on Defendants'
Motion To Seal Documents**

Herring v. Ortho-McNeil-Janssen Pharmaceuticals, Inc., et al. [Docket No. L-5787-07-MT]
(In re: Ortho Evra® Birth Control Patch Litigation, Case No. 275)

For Defendants: Susan Sharko, Esq., Drinker Biddle & Reath, LLP

For Plaintiffs: Wendy Fleishman, Esq., Lieff Cabraser Heimann & Bernstein, LLP

Dated: April 30, 2010

For the reasons set forth in this memorandum, the amended motion filed on behalf of Johnson & Johnson, Johnson & Johnson Pharmaceutical Research & Development, L.L.C., and Ortho-McNeil Pharmaceutical, Inc., now known as Ortho-McNeil-Janssen Pharmaceuticals, Inc. ("Defendants" or "J&J") to seal documents submitted in opposition to Defendants' motion on choice-of-law and in support of Defendants' motion for partial summary judgment is GRANTED IN PART. Plaintiff did not oppose Defendants' motion to seal certain records/documents and, in fact, consented to the relief sought.

Defendants provided the court with a copy of the documents sought to be filed under seal in opposition to Defendants' choice-of-law motion; however, the court was not provided with any documents sought to be filed under seal in connection with Defendants' motion for partial summary judgment. In the absence of an ability to review the proposed documents to be filed

under seal with respect to a motion for partial summary judgment, the court is unable to perform the “good cause” analysis required by Rule 1:38-11. Therefore, the court’s ruling is issued only in connection with Defendants’ motion to seal documents submitted in opposition to Defendants’ choice-of-law motion and not to any future motion(s) for partial summary judgment.

Legal Analysis

Rule 1:38-1 establishes a presumption in favor of public access, stating that “[c]ourt records and administrative records . . . are open for public inspection and copying except as otherwise provided in this rule. Exceptions enumerated in this rule shall be narrowly construed in order to implement the policy of open access to records of the judiciary.” R. 1:38-1. Under an exception to this rule favoring public access, a court may seal a court record “for good cause.” R. 1:38-11; see also Hammock v. Hoffman-LaRoche, Inc., 142 N.J. 356, 375-76 (1995). The Rule provides that “good cause” is satisfied where: “(1) [d]isclosure will likely cause a clearly defined and serious injury to any person or entity; and (2) [t]he person’s or entity’s interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38.” R. 1:38-11.

Additionally, as identified in the court rule and relevant case law, “[t]he need for secrecy must be demonstrated with specificity as to *each document*.” Hammock, supra, 142 N.J. at 381-82; see also Pressler, Current N.J. Court Rules, comment 12 on R. 1:38-12. “The need for secrecy should extend no further than necessary to protect the confidentiality. Documents should be redacted when possible, editing out any privileged or confidential subject matter so that the protective order will have the least intrusive effect on the public’s right-of-access.” Hammock, supra, 142 N.J. at 382 (citing South Jersey Pub. Co., Inc. v. New Jersey Expressway Auth., 124

N.J. 478, 488-89 (1991)) (internal citations omitted). In this State, there is an expressed preference favoring redaction of documents as opposed to sealing of documents.

In support of the motion, Defendants submitted a detailed certification from Donna Panasewicz (“Panasewicz Cert.”). Ms. Panasewicz has been employed by one of the Defendant companies since 1995 and, presently, is the Vice President of Global Regulatory Affairs, Established Products for Johnson & Johnson Pharmaceutical Research & Development, L.L.C. Panasewicz Cert., ¶1. In her employment position, Ms. Panasewicz is “required to review research, development, and testing documents, product specifications, manufacturing records, marketing and sales documents and other internal documents for internal medicine products, including ORTHO EVRA®.” Panasewicz Cert., ¶3. Ms. Panasewicz certified that she is “familiar with these types of documents, how they are maintained, and how access to them is regulated.” Ibid.

The documents to be sealed as part of Defendants’ original motion relate to Plaintiff’s opposition to Defendants’ choice-of-law motion on the issue of punitive damages. However, Defendants’ amended notice of motion also requests the sealing of court records in support of a motion for partial summary judgment to be filed by Defendants in this case. The court was not provided with copies of the documents/records sought to be sealed as part of Defendants’ partial summary motion.

The court was provided with copies of the documents/records sought to be sealed in connection with Defendants’ choice-of-law motion. The proposed sealed documents fall within the following categories: (1) Plaintiff’s medical records containing personal identifiers; (2) portions of the transcripts from the depositions of Plaintiff and her prescribing physician; (3) portions of the transcripts from the depositions of Defendants’ employees and/or former

employees; and (4) confidential documents produced by Defendants during discovery in the federal Multi-District Litigation regarding the development, design, testing, manufacturing, marketing and sale of ORTHO EVRA®.

The premise for the request to seal documents is two-fold. First, the documents relating to Plaintiff contain her personal medical information/medical history and, as such, Plaintiff's privacy interest outweighs the presumptive right to public access to court records. Second, the documents relating to Defendants' development, design, testing, manufacturing and sale of ORTHO EVRA® contain confidential and proprietary information and, as such, disclosure of these documents is "likely to cause a clearly defined and serious injury" to Defendants. Defendants argue that the development and marketing of contraceptives is a highly competitive business and that the disclosure of Defendants' documents would thus cause "serious injury" in the form of financial harm to Defendants. *Panasewicz Cert.*, ¶¶11-15.

Plaintiff did not request that her records or related deposition testimony be sealed. In fact, it was the filing of the documents by Plaintiff's counsel in the first instance that led to Defendants' motion to file documents under seal. Plaintiff consented to Defendants' application to seal Plaintiff's medical records, pharmacy records, deposition testimony and other documents. However, there is no certification offered on behalf of Plaintiff in support of a "good cause" showing to seal the information.

The New Jersey Court Rules provide a method for protecting litigants via redaction of "confidential personal identifiers." See Rule 1:38-7; see also Hammock, *supra*, 142 N.J. at 382. This rule requires redaction of such personal identifiers if appearing on a document submitted to the court. While this action involves a mass tort designated product liability claim against a pharmaceutical manufacturer, this case is no different from other product liability cases or

personal injury actions wherein a plaintiff's medical records and related testimony are filed with the Clerk of the Court without being sealed. Therefore, the following exhibits annexed to the certification of Plaintiff's counsel dated November 29, 2009 shall not be sealed by the court; however, the submitted documents must comply with the requirements of Rule 1:38-7:

Exhibit A- Plaintiff's complaint

Exhibit B – Deposition of Dr. Remington-Boone dated February 2, 2009

Exhibit C – Deposition of Plaintiff dated September 15, 2008

Exhibit D – Emergency room record for plaintiff dated December 6, 2006

Exhibit F – Pharmacy records for plaintiff

Counsel submitting any of the above exhibits are required to redact all personal identifiers in accordance with Rule 1:38-7(e) before filing the documents with the Clerk of the Court.

The court also reviewed Exhibit E and Exhibits G through Z annexed to the certification of Plaintiff's counsel dated November 29, 2009. A brief description of these documents (to the best of the court's ability) follows:

Exhibit E – Deposition of Georgia Lehnert – current/former employee of Defendants

Exhibit G – OMP 2002 Marketing Report

Exhibit H – Deposition of Gary Shangold – current/former employee of Defendants

Exhibit I – Powerpoint presentation by current/former employee of Defendants

Exhibit J – Deposition of Larry Abrams, Ph.D – current/former employee of Defendants

Exhibit K – Deposition of Jane Stepic from December 2, 2005 – current/former employee of Defendants

Exhibit L – Deposition of Jane Stepic from October 29, 2007

Exhibit M – Deposition of Jeffrey Meringer from October 12, 2009 – current/former employee of Defendants

Exhibit N – internal e-mail among employees of Defendants dated September 7, 2001

Exhibit O – Letter regarding Quality Assurance dated September 26, 2002

Exhibit P – Technical Update on ORTHO EVRA®

Exhibit Q – Development of Contraceptive Transdermal System

Exhibit R – Deposition of Johann Benze-Brisco, Ph.D – current/former employee of Defendants

Exhibit S – November 2001 ORTHO EVRA® label

Exhibit T – Defendants’ memorandum regarding the core date sheet

Exhibit U – Deposition of Donald Heald, Ph.D – current/former employee of Defendants

Exhibit V – Deposition of Paul Soons, Ph.D – current/former employee of Defendants

Exhibit W – November 2005 ORTHO EVRA® label

Exhibit X – Deposition of Jeffrey Meringer from July 17, 2007

Exhibit Y – Deposition of Dr. Andrew Friedman – current/former employee of Defendants

Exhibit Z – Defendants’ e-mail dated September 13, 2005

Exhibit AA – Deposition of Jeffrey Meringer from November 23, 2009.

Exhibit S and Exhibit W - the 2001 and 2005 label for ORTHO EVRA® - will not be sealed by the court. The content of the labels is published in the Physician Desk Reference and, therefore, is presumably available to the public and competitors of Defendants. See Hammock, supra, 142 N.J. at 384 (“information that is in the public domain . . . cannot be protected as a

trade secret”) (quoting SI Handling Systems, Inc. v. Heisley, 753 F.2d 1244, 1256 (3d Cir. 1985)) (internal citations and quotations omitted).

After reviewing Exhibits E, G, H, I, J, K, L, M, N, O, P, Q, R, T, U, V, X, Y, Z and AA, these exhibits shall be permitted to be filed under seal. Based upon a thorough review of the portions of these documents, the court is satisfied that the “good cause” requirement of Rule 1:38-1 has been met by Defendants. Specifically, the court finds that disclosure of these documents “will likely cause a clearly defined and serious injury” to Defendants. Based upon the information in the Panasewicz Cert., the court finds that the sale of contraceptives is highly competitive among companies in the field. These identified documents contain a wealth of proprietary information, including trade secrets related to Defendants’ design, development, manufacture, marketing, and sale of ORTHO EVRA®. The disclosure of “trade secret or other confidential research, development or commercial information” falls under Rule 4:10-3(g), allowing the court to provide for the sealing of the documents.

Conclusion

The court will enter an order memorializing the decision to allow the filing of Exhibits E, G, H, I, J, K, L, M, N, O, P, Q, R, T, U, V, X, Y, Z and AA under seal. Exhibits A, B, C, D, F, S, and W need not be filed under seal, but the party submitting these documents shall comply with the requirements of Rule 1:38-7(e). As to documents sought to be filed under seal related to any motion for summary judgment and/or partial summary judgment, the requested relief is denied without prejudice. Any renewed application to seal documents

associated with future motion practice should include copies of the proposed documents to be filed under seal to allow the court to undertake the required “good cause” analysis under Rule 1:38-11.



JESSICA R. MAYER, J.S.C.